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DAVID LORENZO GARCIA

6 UNITED STATES DISTRICT COURT

7 FOR THE CENTRAL DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA,
9

10 Plaintiff,

11 v.

12 DAVID LORENZO GARCIA,

13 Defendant.
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No. CR 15-707-R

DEFENDANT DAVID L. GARCIA'S
SENTENCING MEMORANDUM IN SUPPORT
OF A SENTENCE OF TIME SERVED AND
SUPERVISED RELEASE, WITH
CONDITIONS

CURRENT SENTENCING HEARING DATE:
07/25/2016

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1 Defendant David Lorenzo Garcia, by and through his counsel of
2 record, Chad Nardiello, hereby submits this sentencing memorandum in
3 support of a sentence of time served and supervised release, with
4 conditions described below.

5 **I. INTRODUCTION**

6 David's Co-Defendant, Jessica Lopez, sent him on what turned out
7 to be a fool's errand: to pick up narcotics in Los Angeles and return
8 to Lopez. This was David's first and only interaction with Lopez, as
9 well as the alleged conspiracy. David made the fateful decision to
10 leave Rosarito, Mexico and go to Los Angeles because he was trying to
11 get paid for doing a task for Lopez's then-boyfriend. That task:
12 moving furniture. The methamphetamine was an acceptable form of
13 payment because David was an addict with an addiction that stretched
14 for nearly one-half of his lifetime.

15 David is not the typical drug offender. He has never been in a
16 gang nor does he have tattoos. He has never sold drugs or been an
17 ongoing participant in a conspiracy to sell drugs. He has never
18 committed an offense involving a weapon. And he is not a violent
19 person.

20 The impetus for David's conduct in the instant offense, and the
21 other missteps in his life, can all be traced back to one thing: his
22 methamphetamine addiction. David has been unable to maintain
23 relationships with the mothers of his two children, or the children
24 themselves. He has lost employment due to his addiction. And he has
25 also committed other offenses due to his addiction.

26 David is now in a good place. He has been sober for five
27 months, attends daily therapy meetings, and is learning the skills to
28 effectively manage his addiction while in his current in-patient

1 treatment center. David has also been promoted multiple times while
2 at the treatment center and distinguished himself as an "Employee-of-
3 the-Month" as well as a "Motivator" responsible for assisting in the
4 recoveries of other residents. He has also taken steps to obtain his
5 GED, driver's license, and Social Security card so that he can obtain
6 compensable employment as soon as he is able.

7 David regrets his conduct, and he regrets that the Court and the
8 United States have had to expend resources to charge and sentence
9 him. David also takes full responsibility for his crime, and he is
10 willing to do what it takes to make amends. He also hopes to obtain
11 continuing treatment for his addiction, as he understands that such
12 treatment is the key to him avoiding future violations of the law.

13 The focus of David's sentencing determination should be on his
14 recovery and reintegration into society. David has already
15 experienced the deterrent effect of the legal system by being
16 charged, pleading guilty, serving 30 days in jail, living under the
17 control and supervision of the government, being subject to regular
18 drug testing, and facing society as a federal felon. The public's
19 cause, as well as David's, is best served by him continuing his drug
20 treatment outside of prison and allowing him to move forward with
21 attaining financial and emotional self-sufficiency. This is the most
22 well recognized means of ensuring that he does not reoffend. He
23 cannot achieve those goals with a sentence that includes further
24 incarceration. Such a sentence will only derail those goals and make
25 meaningless the successes he has had to date.

26 For these reasons, David respectfully requests a sentence that
27 consists of incarceration limited to time served, supervisory
28 release, 200 hours of community service, drug treatment and testing,

1 compensable employment, and any other conditions the Court wishes to
2 impose.

3 **II. DAVID GARCIA'S BACKGROUND**

4 **A. Methamphetamine Gets Introduced To A Vulnerable Child**

5 David, being an industrious soul, set out at the just post-
6 pubescent age of 16 or 17 to find a job that could pay him a decent
7 wage and allow him to provide for himself. David was successful, and
8 found a job painting cars at an auto body shop in San Diego.
9 Unbeknownst to David, the owners of the business were dealers in
10 methamphetamine. When the business fell on hard times and could not
11 afford to pay its employees in money, the owners offered the drug as
12 a portion of David's compensation. Presentence Investigation Report
13 ("PSR"), para. 42. David, having no concept at such a young age of
14 the dangers of the drug, accepted and took his first dosage. From
15 that point forward, David has lived with his addiction.

16 **B. A Child With Stunted Mental Development**

17 As a child, David did not have a close relationship with either
18 his mother or father. This left a void where positive influence
19 should have prevailed. David's parents did not impress upon him the
20 importance of surrounding himself with upstanding people, nor the
21 importance of avoiding drugs, nor the importance of avoiding criminal
22 activity. David fell into each one of these scenarios. David also
23 made a fateful decision to leave school in the ninth grade. PSR,
24 para. 42. David is unable to read and write. For example, David
25 required assistance in completing rather simple questions on the U.S.
26 Probation Office's intake forms, such as your family members' names.
27 Because of teasing and embarrassment by his classmates at these
28

1 failings, David removed himself from such hostilities and left
2 school. *Id.*

3 The inability to read and write is reflective of a more severe
4 condition: David has been diagnosed with dyslexia. *Id.* This
5 condition "affects the way information is processed, stored and
6 retrieved, with problems of memory, speed of processing, time
7 perception, organization and sequencing." British Dyslexia
8 Association, *Dyslexia And Specific Learning Difficulties In Adults*,
9 (visited July 8, 2011),
10 [http://www.bdadyslexia.org.uk/dyslexic/dyslexia-and-specific-](http://www.bdadyslexia.org.uk/dyslexic/dyslexia-and-specific-learning-difficulties-in-adults)
11 [learning-difficulties-in-adults](http://www.bdadyslexia.org.uk/dyslexic/dyslexia-and-specific-learning-difficulties-in-adults). A learning disability of this type
12 indicates that David has a reduced capacity to comprehend concepts.

13 **C. David's Addiction**

14 As any addict would readily attest, dealing with an addiction to
15 narcotics is a life-long endeavor. It is not something that is ever
16 eliminated; rather, it is something that one learns to manage. David
17 is now 33 years old and he has been living with his addiction for
18 nearly one-half of his life. PSR, para. 51. It has run roughshod
19 over his decision making. It has led him to commit crimes so that he
20 can serve his addiction, as in this case. PSR, para. 52. It has led
21 him to forsake relationships with his daughter and his son. *Id.* It
22 has led him to lose jobs that he desperately needed and wanted. It
23 also led him to be blind to the consequences of his actions.

24 David's addiction was severe prior to his recent arrest. He was
25 using methamphetamine on a daily basis. He would work odd jobs, sell
26 personal possessions, and do whatever it took to get the drugs.
27 David has taken the drug in nearly every form imaginable; he has
28 snorted it, drank it, and inhaled it. PSR, para. 51. David and his

1 family have tried before to get control over his addiction by going
2 to a treatment center. But those facilities were in Mexico and did
3 not offer the same level of treatment and care that is normally found
4 in the United States. Thus, David was ill-equipped to manage his
5 addiction, and ultimately, he fell back under its control.

6 **D. David's Recovery**

7 Nothing is more important in David's life than his recovery.
8 This includes the ability to manage his addiction, be a parent, be a
9 brother and a son, find a paying job, get a driver's license, get a
10 Social Security card, and become self-sufficient. David is already
11 well on his way.

12 As part of his bail conditions, David was remanded to the
13 supervision of Pre-Trial Services so that he could partake in an in-
14 patient rehabilitative and drug treatment program at Phoenix House in
15 Santa Ana, California. It is a six-month program, and David has been
16 there since February 18, 2016. Since arriving at the Phoenix House
17 nearly five months ago, David has tested negative each time for the
18 presence of narcotics in his system. Attached hereto as **Exhibit A** is
19 a copy of a June progress report prepared by David's counselor,
20 Douglas Tucker, Sr. MHS, CATC IV, wherein he writes that David "is
21 fully compliant with testing protocol, rendering all 'negative'
22 results." In addition, he attends daily Narcotics Anonymous meetings
23 at the Phoenix House. He also attends Narcotics Anonymous meetings
24 outside of and independent from the Phoenix House on Mondays,
25 Tuesdays and Wednesdays. For the outside meetings, David organizes a
26 group of approximately 10 other Phoenix House residents to attend by
27 preparing a list on the Friday before the meetings. He then gets the
28 signature of the meeting host and returns that to the management at

1 Phoenix House. As Mr. Tucker noted in the progress report, David is
2 "fully committed to his recovery, and has continued making exemplary
3 progress in exceeding his personal and treatment goals and
4 objectives," and "is diligent in his attendance and participation to
5 all group, individual, and educational counseling sessions." Exhibit
6 A; PSR, para. 9. David's counselors are so impressed by his
7 abilities to manage his addiction that they have elevated him to the
8 role of Motivator. This position requires him to take on a
9 leadership position in the Phoenix House such that David is now
10 responsible for assisting in the recoveries of the other residents.
11 Mr. Tucker described David as follows: "[his] initiative to be active
12 in the therapeutic community makes him invaluable to his peers."
13 Exhibit A.

14 As David has matured, he is also realizing that he has been
15 blessed with two people in this life that have been pushed aside by
16 his addiction: his two children. David's daughter (now 16 years old)
17 and his son (now 6 years old) do not know their father, and have not
18 been involved his life. Recognizing his failings, David enrolled
19 himself in a 10-week parental training course. Attached hereto as
20 **Exhibit B** is a copy of David's certificate of successful completion.
21 David has also begun to reach out to his children through letters and
22 other family members. He has learned that his son would like to come
23 and live with him. David has also taken steps to reach out to the
24 mothers of his children so that he can reestablish relationships.
25 David understands that this is essential to reconnecting with his
26 children.

27 David's recovery is also bolstered by what is now a familial
28 support structure. David's mother and sister now make regular visits

1 to David at the Phoenix House. They bring him clothes, personal
2 effects, and other items. They also regularly attend Al Anon
3 meetings, an organization to assist family members that have a loved
4 one suffering from addiction. David's mother and sister are also
5 helping David with some of the more mundane aspects of reintegrating
6 into society. They have provided David with assistance in completing
7 and filing forms so that he can get a driver's license and a Social
8 Security card. And in a further sign of their commitment to David's
9 recovery, his family has offered to allow David to live in the family
10 home in San Diego once he has completed his penal obligations.

11 **E. The Importance of Employment**

12 The other major component to David's recovery is employment.
13 This not only allows David to become financially self-sufficient, but
14 more importantly it provides him with an inner stability that he so
15 desperately needs. David finds his purpose in work, and not just any
16 work but physical labor. The satisfaction that he gains from working
17 allows him to mentally make sense of his life, and to realize that
18 there is more to life than feeding an addiction. It also provides
19 him with a sense of pride in himself and to dispense with thoughts of
20 insecurity and inadequacy. These feelings have a direct effect on
21 his ability to manage his addiction.

22 David understands the importance of work to his recovery, and he
23 has worked for nearly his entire adult life. As a resident of
24 Phoenix House, David is required to work at the facility. David
25 began working as a dishwasher. In less than one month, he was
26 promoted to a kitchen crew leader, a role that required him to
27 oversee food preparation for the entire facility. David was then
28 promoted to the head of maintenance and grounds at the Phoenix House.

1 His recent duties in this position required him to be responsible for
2 overseeing and painting the exterior of the property's buildings.
3 Along the way, David earned an employee-of-the-month award for his
4 efforts, a copy of which is attached hereto as **Exhibit C**.

5 Not being content with his successes at the Phoenix House, David
6 is taking steps to obtain independent, paying employment. As a means
7 to make himself further marketable, David recently submitted the
8 required materials to obtain his GED certificate. David has also
9 begun approaching local businesses and submitting job applications in
10 the area of the Phoenix House seeking employment. David also
11 recently made a call to his old employer, Mr. Saul Escalante. He
12 employed David as a house painter prior to David's most recent
13 arrest. Mr. Escalante has known David for over five years and can
14 attest to David's good character, as evidenced by him offering David
15 a job as soon as he is able to work in the San Diego area.

16 David is also not without marketable skills. In former jobs,
17 David was required to obtain certifications. David is certified by
18 OSHA for underground work on mainline pipes and plumbing, i.e., pipes
19 that carry waste from a structure to a sewage system. He is also
20 certified as a flagman to direct traffic in and around constructions
21 sites and roadways. These certifications will assist David in his
22 quest to find employment.

23 By all accounts, David is embracing his recovery. He is taking
24 every possible step that he can think of to ensure his success. He
25 also understands the importance of managing his addiction. And
26 perhaps more importantly, he now understands how to manage it.

27 **III. BACKGROUND FACTS RELATING TO OFFENSE CONDUCT**

28

1 **A. The United States' Recognition of David's Limited**
2 **Involvement And Minimal Role**

3 David has pled guilty to possession of methamphetamine with the
4 intent to distribute pursuant to 21 U.S.C. section 841(a)(1) and the
5 penalty provision under sub-section (b)(1)(C). Upon the government's
6 motion, the Court dismissed the related conspiracy charge. For
7 perspective, the definition of the term "distribute" that appears in
8 the statute is defined quite broadly in Title 21 to mean "deliver."
9 21 U.S.C. §802(11). The term deliver is defined to include the
10 "attempted transfer of a controlled substance ... whether or not there
11 exists an agency relationship." 21 U.S.C. §802(8). Thus, the
12 statute does not possess a great deal of rigor when criminalizing
13 conduct involving narcotics.

14 Perhaps in recognition of the nature of the statute, and
15 certainly in recognition of David's minimal role, the United States
16 stipulated in the plea agreement to a downward guidelines adjustment
17 of four. See United States Sentencing Guidelines ("U.S.S.G"),
18 §3B1.1; PSR, para. 21. It is doubtless that the following facts
19 among others led to this agreement: (i) David was only involved in
20 one purchase; (ii) David had no prior association with his co-
21 defendants Roberto Macias, Jessica Lopez, and Adriana Aguilar; (iii)
22 David was not involved in selling the narcotics; (iv) David was not
23 part of a criminal enterprise; and (v) David was acting on behalf of
24 another.

25 **B. How David Became Involved**

26 David does not embody the typical narcotics convict. David is
27 not affiliated with a gang. He has never sold narcotics. He has
28 never used a weapon in the commission of illegal conduct. He has

1 never used violence in furtherance of a drug trade. Nor does he have
2 any tattoos. PSR, para. 47. David is addicted to methamphetamine.

3 David became involved in the conduct that led to the instant
4 offense by attempting to satisfy his addiction. While working one
5 evening in a restaurant in Rosarito, Mexico, David engaged in a
6 conversation with a person by the name of Omar. After David
7 mentioned that he had a pick-up truck, Omar indicated that he had
8 just moved to Rosarito from Los Angeles and was unable to move all of
9 his furniture. Omar asked David if he would be willing to go to Los
10 Angeles and retrieve the furniture and bring it to Rosarito, and in
11 exchange, Omar would pay David a certain amount of money. David
12 agreed, and upon delivering the furniture to Omar in Rosarito, the
13 latter stated that he did not have any funds to pay David. Omar then
14 suggested that David return to Los Angeles to pick up a quantity of
15 methamphetamine and bring it back to Omar's girlfriend, Jessica
16 Lopez. In exchange, Omar would compensate David with a portion of
17 the narcotics. Unfortunately, and being under the control of his
18 addiction, David agreed. While carrying out that task, David was
19 arrested for the instant offense.
20
21

22 What is obvious is that David was not possessed with a mind to
23 become involved in a criminal enterprise. David was simply trying to
24 satisfy his addiction.
25

26 **IV. ANALYSIS: THE SECTION 3553(a) FACTORS FAVOR A DOWNWARD VARIANCE**

27 The United States Sentencing Guidelines ("Guidelines") no longer
28 enjoy a presumption of reasonableness. *Gall v. United States*, 552

1 U.S. 38, 50 (2007) (a judge "may not presume that the Guidelines
2 range is reasonable"); *Nelson v. United States*, 555 U.S. 350, 352
3 (2009). As this Court is well aware, the Supreme Court's decision in
4 *Booker v. United States*, 543 U.S. 220 (2005), removed the restraints
5 that bound this Court's sentencing determinations to the Guidelines.
6 The natural consequence is a liberation of this Court in its analyses
7 when deciding to vary. The Court is no longer required to find the
8 presence of "extraordinary circumstances." *Gall*, at 47. The Court
9 is entitled to reject "rigid mathematical formulation" that may have
10 previously weighed on its decisions. *Id.* (no requirement that a
11 variance be within a certain percentage of the Guidelines range).
12 The Court, though it must provide an explanation, is not required to
13 provide an one that is "extensive or detailed." *United States v.*
14 *Verkhoglyad*, 516 F.3d 122, 136 (2d Cir. 2008) (citing *Gall v. United*
15 *States*, at 46 ("'proportional' justifications for departures from the
16 Guidelines range is not consistent with our remedial opinion in
17 *United States v. Booker*")). And perhaps most importantly, a
18 presumption of unreasonableness no longer attaches when this Court
19 seeks to vary below the guidelines. *Gall*, at 52.

20 The Supreme Court has now refocused sentencing determinations
21 such that they are based on an individualized assessment of the
22 person, as well as his or her history, motivations, and character.
23 *United States v. Booker*, 543 U.S. 220, 245 (2005). The Supreme Court
24 encourages sentencing courts to exercise great discretion in imposing
25 a just and fair sentence. See e.g., *Kimbrough v. United States*, 552
26 U.S. 85 (2007) (Supreme Court upheld a sentence at odds with and
27 below the drug-related provision of the Guidelines); *Spears v. United*
28 *States*, 555 U.S. 261 (2009) (reaffirming *Kimbrough* that a policy

1 difference is sufficient for a Court to reject the application of a
2 Guidelines provision). The framework of course is found 18 U.S.C.
3 section 3553(a). The "overarching provision [for] district courts
4 [is] to 'impose a sentence sufficient, but not greater than
5 necessary.'" *Kimbrough*, at 101 (*quoting* 18 U.S.C. §3553). The
6 statute describes the seven factors that the Court is to consider in
7 fashioning a sentence: (i) the nature of the offense and history and
8 characteristics of the defendant; (ii) the purpose of sentencing;
9 (iii) the kinds of sentences available; (iv) the Sentencing
10 Guidelines; (v) any pertinent policy statements; (vi) the need to
11 avoid unwanted sentencing disparities among similar offenders; and
12 (vii) the need for restitution to victims. 18 U.S.C. §3553(a); *Rita*
13 *v. United States*, 551 U.S. 338, 347-48 (2007). After consideration
14 of those factors, the Court must "tailor the sentence" that is unique
15 to the person and his or her circumstances. *Booker*, at 245.

16 Although the Guidelines are a factor that the Court must
17 consider, it is free to reject or disagree with them. That
18 disagreement could be based on an individualized, case-specific
19 determination that the Guidelines yield an excessive sentence in a
20 particular case. See *e.g. United States v. Booker*, 543 U.S. 220,
21 245-46 (2005). But it could also be based purely on a policy
22 difference that a sentencing judge may have, and grounded in no fact
23 specific to the defendant's case. *Spears v. United States*, 555 U.S.
24 261, 264 (2009) (Referring to *Kimbrough v. United States*, 552 U.S. 85
25 (2007), the Supreme Court pronounced "a recognition of district
26 courts' authority to vary from the crack cocaine Guidelines based on
27 policy disagreement with them." (*emphasis in original*)).
28

1 In this situation, full consideration of the section 3553(a)
2 factors warrants a variance for David to a sentence of time served
3 and supervised release, with conditions. As shown below, this
4 sentence properly takes into consideration David's personal history,
5 the nature of his offense and his limited involvement therein, the
6 punishment and loss that he has already suffered, and the sentences
7 imposed on other defendants for the same or similar offenses. Most
8 importantly however, such a sentence provides recognition of David's
9 successes in his recovery, and allows him to continue his recovery
10 without the likely adverse consequences that incarceration would
11 bring.

12 **A. Nature And Circumstance of David's Offense**

13 David regrets and is incredibly remorseful for his conduct. He
14 well recognizes that he made a mistake by agreeing to go to Los
15 Angeles to pick up methamphetamine and return it to Ms. Lopez. That
16 conduct however did not occur within a vacuum.

17 **1. Mitigating Role Adjustment Is Insufficient**

18 As the United States recognizes, David's involvement in the
19 offense and with the conduct of his co-defendants is limited. PSR,
20 para. 22 ("he was substantially less culpable than his co-defendants
21 who distributed"). This is conduct for which David has already
22 served 30 days in federal incarceration. The United States agreed to
23 a downward adjustment for David because it views him as a "minimal
24 participant" under section 3B1.2(a) of the Guidelines. This however
25 does not correctly reflect the true nature of David's peripheral
26 involvement.

27 Sentencing courts have not hesitated to vary significantly from
28 a guidelines sentence where the downward adjustment for a mitigating

1 role is insufficient. For example, one court sentenced a defendant
2 to probation and home detention even though he was facing 57 to 71
3 months for his involvement in a methamphetamine conspiracy because
4 the downward adjustment under section 3B.1.2(a) of the Guidelines was
5 inadequate to account for the defendant's limited role. *United*
6 *States v. Jaber*, 362 F. Supp. 2d 365 (D. Mass. 2005) (Defendant had
7 ongoing participation in the conspiracy for seven months and was paid
8 a weekly salary for his role by the lead co-defendant). In another
9 example, a court sentenced a defendant to five months of
10 incarceration and five months of home confinement, instead of a
11 Guidelines sentence of 27 to 33 months, because the mitigating role
12 adjustment was inadequate. *United States v. Thomas*, 595 F. Supp. 2d
13 949 (E.D. Wis. 2009) (Court imposed incarceration because of need for
14 deterrence based on prior drug conviction).

15 As described above, David decided to make a one-time pick up and
16 transport the narcotics as a means to receive compensation for moving
17 furniture for an acquaintance, and to satisfy his then-insatiable
18 appetite for methamphetamine. PSR, para. 22 ("There is no indication
19 that Garcia played any role in the distribution of methamphetamine
20 other than picking up the drugs from Macias."). David was not a
21 participant in a longer-term conspiracy but a mere single-instance
22 functionary. He did not possess any weapons, resist arrest, or
23 profit from his co-defendants' conduct in any way.

24 **2. David Lacked Knowledge Of The Specifics**

25 The extent of David's knowledge regarding the purpose of his
26 visit to Los Angeles was to pick up methamphetamine and return it to
27 Jessica Lopez, and in exchange, David would receive compensation in
28 the form of a small quantity of the narcotic for his prior assistance

1 in moving furniture. David had no knowledge or control of how much
2 methamphetamine he was picking up. Nor did he have any knowledge or
3 control over its purity. As the PSR makes clear, "it does not appear
4 that Garcia had knowledge or understanding of the scope and structure
5 of [Co-Defendant] Macias' methamphetamine distribution enterprise."
6 PSR, para. 22. Courts have repeatedly used such lack of knowledge as
7 a basis for a downward departure. *See e.g., United States v.*
8 *Mendoza*, 121 F.3d 510 (9th Cir. 1997) (Courts "consider a downward
9 departure on the ground of ... [defendant's] lack of control over, and
10 knowledge of, the purity of the methamphetamine ... possessed for
11 distribution."); *United States v. Jaber*, 362 F. Supp. 2d 365 (D.
12 Mass. 2005) (functionary role with lack of knowledge regarding
13 methamphetamine conspiracy warranted departure to probation).

14 **3. David's Brief Temporal Involvement**

15 As described in detail above, David was involved with his co-
16 defendants on only one occasion that lasted for a portion of one day.
17 Unlike his Co-Defendants Macias and Lopez, as alleged by the United
18 States, David was not engaged in an ongoing conspiracy to possess,
19 traffic in, and sell narcotics. David made a single trip to Los
20 Angeles so that he could facilitate payment to himself for moving
21 furniture. Courts have also used a defendant's brief temporal
22 involvement as a basis to vary from the Guidelines. *See e.g., United*
23 *States v. Castellanos*, 2008 U.S. Dist. LEXIS 101640 *18 (D. Neb. Dec.
24 29, 2008) (In a substantial departure from the guidelines, court
25 relied in part on defendant's limited eight-month involvement in drug
26 conspiracy); *United States v. Adelson*, 441 F. Supp. 2d 506, 513
27 (S.D.N.Y. 2006) (Variance from life in prison to 42 months in part
28

1 based on defendant's involvement in a securities-fraud conspiracy's
2 "final months.").

3 **B. David's History & Characteristics**

4 There are multiple bases that are unique to David that should
5 inform this Court of how best to sentence him. Some of those relate
6 to adversity that David has faced, such as his drug addiction and his
7 dyslexia. Others relate to his industrious nature and the self-
8 created success that he has had in his recovery thus far.
9

10 **1. David's Adversities**

11 As described above, David is a recovering methamphetamine
12 addict. It is a struggle with which he contends on a daily basis. It
13 is also the impetus for him committing the instant offense. But for
14 David's need to feed his addiction, he would have never put himself
15 in the position to drive to Los Angeles to pick up narcotics. At
16 that time however, he was not capable of effectively managing his
17 addiction; rather, it exerted control over David's decision making to
18 his severe detriment.
19

20 There can be no question that David's decision to engage in the
21 instant offense conduct was brought about by adversities not faced by
22 the average "heartland" defendant. His mental capacity at the time
23 of the offense was impaired by his drug addiction. As the Ninth
24 Circuit has made clear, a district court has discretion to consider a
25 defendant's diminished mental capacity due to drug addiction. *United*
26 *States v. Garcia*, 497 F.3d 964, 971-72 (9th Cir. 2007) (case remanded
27
28

1 to district court to re-determine sentence to consider drug addiction
2 as basis for diminished mental capacity).

3 David's dyslexia diagnosis is what led him to leave school in
4 the eighth grade because he was embarrassed by his inability to read
5 and write. That condition has also been a source of great insecurity
6 to David, an insecurity that he previously attempted to ignore
7 through substance abuse.
8

9 **2. David's Positives**

10 David is quite an industrious and hard-working individual. He
11 has been working since the age of 15, when he started as an assistant
12 to his father in the cabinet-making industry. PSR, para. 42. David
13 has worked ever since in a variety of positions, including as an
14 auto-body shop employee, plumber, construction worker, horse trainer,
15 restaurant employee, and most recently a painter. David enjoys
16 physical labor and it provides a mental stability and satisfaction
17 that he cannot find elsewhere.

18 David has also had great success in his recovery. He has
19 remained sober since entering the Phoenix House. He attends daily
20 therapy and Narcotics Anonymous Meetings with multiple groups. He
21 has been promoted two times, and has been awarded a certificate as
22 Employee of the Month. His counselors have repeatedly attested to
23 his positive influences on his co-residents. Most notably, he has
24 been assigned the role of Motivator, a position that requires him to
25 assist and lead other residents of the Phoenix House in learning to
26 managing their own substance-abuse problems. David has also taken
27 steps to obtain his GED, his driver's license and Social Security
28 card. He has contacted his old employer about a job, and taken

1 initiative to look for other jobs by canvassing the community near
2 the Phoenix House. David is solely focused on his reintegration back
3 into society.

4 **C. The Sentence Should Be "Sufficient, But Not Greater Than**
5 **Necessary"**

6 David is remorseful, takes responsibility, and is genuinely
7 sorry for his conduct. And he does not deny in any way the
8 underlying facts that support the instant offense. But the purposes
9 of sentencing found in section 3553(a)(2) do not support a further
10 term of incarceration. Rather, they suggest that David be sentenced
11 to time served, placed under supervisory release, and complete other
12 conditions. This coupled with the 30 days that David has already
13 spent incarcerated is a sufficient sentence.

14
15 The retribution aspect of the statute, i.e., section
16 3553(a)(2)(A), requires the Court to consider the seriousness of the
17 offense, promote respect for the law, and impose just punishment.
18 None of these considerations warrants a sentence that includes
19 additional incarceration. David picked up narcotics on behalf of
20 another person, Jessica Lopez, so that he could obtain compensation
21 for moving furniture for her boyfriend. David was acting under the
22 burden of his addiction at a time when he had no skills or
23 understanding of how to manage it. He was not a meaningful player in
24 a larger scheme designed for him to reap profits through narcotics.

25
26 As to the need for deterrence, this is not something that David
27 has ever needed. He does not have a criminal mind; he has an
28 addict's mind. The thought processes that have caused him to commit

1 the instant offense, as well as prior offenses, were based on a
2 desire to satisfy his addiction. The key to David's deterrence is
3 his recovery, and improving his skills in managing his addiction.
4 Courts recognize that the likelihood of recidivism drops
5 significantly when the defendant is able to receive drug treatment
6 outside of prison. See e.g., *United States v. Perella*, 273 F. Supp.
7 2d 162, 164 (D. Mass 2003) ("[S]tatistics suggest that the rate of
8 recidivism is less for drug offenders who receive treatment while in
9 prison or jail, and still less for those treated outside of a prison
10 setting."). Moreover, as the United States Department of Justice
11 recognizes, "prison sentences (particularly long sentences) are
12 unlikely to deter future crime. Prisons actually may have the
13 opposite effect: Inmates learn more effective crime strategies from
14 each other, and time spent in prison may desensitize many to the
15 threat of future imprisonment." National Institute of Justice, *Five*
16 *Things About Deterrence*, Office of Justice Programs, U.S. Dept. of
17 Justice, (visited July 8, 2011), [http://nij.gov/five-](http://nij.gov/five-things/pages/deterrence.aspx)
18 [things/pages/deterrence.aspx](http://nij.gov/five-things/pages/deterrence.aspx).

21 There is no need to protect the public from further crimes of
22 David; he has not committed any crime that would harm the public.
23 The only harm that was brought about by David's conduct was to
24 himself.
25

26 The fourth purpose of sentencing is most poignant in David's
27 case. It focuses on how to provide David with "correctional
28 treatment in the most effective manner." 18 U.S.C. §3553(a)(2)(D).

1 The treatment that would be most effective to David would be to allow
2 him to continue with his drug treatment so that he is capable of
3 fully managing his addiction. David is now respectful of the gravity
4 of his addiction, and is focused on his treatment. The five months
5 that David has spent in the Phoenix House has placed him on the
6 correct path but by no means is his treatment finished. His
7 treatment successes are self-evident: sobriety, employment
8 promotions, regular therapy attendance, reconnecting with family,
9 admission of responsibility, and acceptance of treatment.
10
11 Incarcerating David at this juncture would only serve to derail his
12 recovery and eliminate his successes. David will have a greater
13 likelihood of ultimate success if he is not incarcerated. *Perella*,
14 at 164.

15 **D. Available Sentences**

16
17 This Court does not need to sentence David to any further
18 incarceration for his crime. He has already served 30 days in a
19 federal jail after his arrest for the instant offense. That time
20 counts towards any sentence imposed by this Court. 18 U.S.C.
21 §3585(b)(1). The focus of David's sentence, and the surefire way to
22 further his recovery, is to sentence him to time served with
23 supervised release, plus the following conditions: (i) 200 hours of
24 community service; (ii) further drug treatment and testing; (iii)
25 compensable employment; and (iv) other conditions the Court imposes.
26
27 The Court is entitled to impose this sentence considering David's 30
28 days of incarceration. 18 U.S.C. §3583(a).

E. Sentencing Guidelines

Notwithstanding the advisory nature of the Guidelines, they are one of the factors set forth in section 3553(a) that the Court should consider but they are entitled to no more weight than any of the other factors. 18 U.S.C. §3553(a)(4); *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). Preliminarily, David would note that the PSR appears to contain a typographical error on page three where it refers to the applicable guideline as section 2D1.5(c)(6) – no such section exists; rather, as cited elsewhere in the PSR, it should be a reference to section 2D.1.1(c)(6). David does not dispute the mathematical computation contained within the PSR, but he does object to the legitimacy of the narcotics guideline at section 2D1.1.

As the Supreme Court in *Rita* explained, the Commission's role in promulgating the Guidelines was/is two-fold: (i) reliance on empirical data of pre-Guidelines sentencing practices; and (ii) continuous revision of the Guidelines based on judicial decisions, empirical data, and comments from participants and experts in the field. *Rita v. United States*, 551 U.S. 338, 350-51 (2007). The first Guidelines manual was released by the Commission in 1987, and included a scheme for sentencing in drug cases based on the type and quantity of drug involved. In other words, it was not based on any empirical data.

The Supreme Court in *Kimbrough* and *Gall*, explained that none of the drug-related provisions in the Guidelines were developed from the "empirical approach." *Kimbrough v. United States*, 552 U.S. 85, 96 (2007); *Gall v. United States*, 552 U.S. 38, 46 n.2 (2007). Issuing a guideline not based on such empirical data exceeds the Commission's allowable "exercise of its characteristic institutional role."

1 *Kimbrough*, at 109-10. This provides a basis for this Court to reject
2 the application of the drug guideline in this case. *Id.* at 110.

3 **F. Unwarranted Disparities**

4 The Court must consider the need to avoid unwarranted sentencing
5 disparities between similarly situated defendants. 18 U.S.C.
6 §3553(a)(6). David submits that the sentences handed out to his co-
7 defendants in this case offer a useful microcosm when fashioning an
8 appropriate sentence.

9 Jessica Lopez received a sentence of 12 months of incarceration
10 for, among other things, her role in the alleged conspiracy.
11 According to the United States and the PSR, Ms. Lopez was part of an
12 ongoing conspiracy with her Co-Defendant Roberto Macias to transport
13 and sell narcotics. PSR, para. 22. It appears that Ms. Lopez was
14 attempting to profit from the scheme, that such scheme was ongoing
15 for multiple months, and that she directed multiple low-level
16 individuals to work for her, including David.

17 In contrast, and more similar to David's culpability, is Co-
18 Defendant Adriana Aguilar. She is only alleged to have a limited,
19 one-time involvement in the scheme. She, like David, was alleged to
20 have been directed to pick up and transport narcotics to Ms. Lopez.
21 Ms. Aguilar however is alleged to have transported nearly 200 percent
22 more narcotics by weight than David. Like David, Ms. Aguilar reached
23 a plea agreement with the United States, and received recognition for
24 her minimal role (-4) and acceptance of responsibility (-3). Based
25 on this, the Court agreed that Ms. Aguilar could participate in the
26 Court's Conviction And Sentencing Alternatives ("CASA") program.
27 David has also applied to CASA but is awaiting a response. This
28

1 means that if Ms. Aguilar successfully completes the program, she
2 will not be subject to any further incarceration.

3 David is even less culpable than Ms. Aguilar. His involvement
4 was brought about by an attempt to obtain payment for moving
5 furniture. He attempted to transport one-third of the amount of
6 narcotics. And he was acting under the burden of his addiction.
7 This warrants a sentence of time served and supervised release, with
8 the conditions outlined above.

9 **G. Restitution**

10 As the PSR indicates at paragraph 13, there are no identifiable
11 victims. As the PSR also indicates, David does not have "the ability
12 to satisfy a financial sanction at this time or in the future." PSR,
13 para. 65.

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Phoenix House
Rising Above Addiction

1207 E. FRUIT STREET, SANTA ANA, CA 92701
PHONE (714) 953-9373 • FAX (714) 953-5775

Progress Report

Date: 06/01/2016

- ☐ PC1210
☐ AB109
☐ Private Pay

- ☐ PSN
☐ USPO

Name of Client: David Garcia

Date of Birth: **REDACTED**

Commitment Days to Program: 120

Enrollment Date: 02/18/2016

Discharge Date: 08/18/2016

- ☒ Acceptable Progress
☐ Needs improvement
☐ Disciplinary action taken, termination

COMMENTS: Client is fully committed to his recovery, and has continued making exemplary progress in exceeding his personal and treatment goals and objectives. Client exemplifies great leadership in the beautification and maintenance of the overall facility, and proudly serves as a supreme example to his peers in recovery. Client has become a trusted and reliable asset to staff, and shows immense initiative in the performance of his responsibilities. Client is diligent in his attendance and participation to all group, individual, and educational counseling sessions, and is fully compliant with testing protocol, rendering all "negative" results. Client's initiative to be active in the therapeutic community makes him invaluable to his peers, and puts him on track to be successful upon reentry.

If you have any questions or concerns, please do not hesitate to contact us.

Phoenix House of California, Orange County

Adult Outpatient Services

Douglas A. Tucker Sr., MHS, CATC IV

(714) 953-9373 ext.4834

CERTIFICATE OF COMPLETION

This Certificate is Awarded to:

DAVID GARCIA

IN HONOR OF COMPLETING THE 10 WEEK PARENT TO PARENT PROGRAM ON

4/15/16

DATE

SUPPORTED BY THE ORANGE COUNTY
PREVENTION CENTER



PARENTtoPARENTTM
A PARENT EDUCATION PROGRAM

EXECUTIVE DIRECTOR SIGNATURE

PROGRAM EDUCATOR SIGNATURE

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EXHIBIT B

EXHIBIT B

Kitchen Woker of the Month

For Providing Leadership and Organizational Skills in the Kitchen

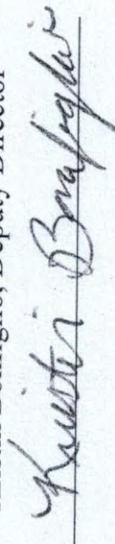
For the Month of February, 2016

This Award is presented to

David Garcia

This award entitles you to 4 extra hours on your next weekend pass

Kristin Bonfiglio, Deputy Director



Brendan Kavanaugh, Program Director



Phoenix House
Rising Above Addiction